

Country 3	=
Country 4	=
Country 5	=
Country 6	=
Currency 1	=
Currency 2	=
Amount 1	=
Amount 2	=
Amount 3	=
Amount 4	=
Amount 5	=

Dear :

This letter responds to a letter dated Date 1, submitted on behalf of Taxpayer by its authorized representatives (the "Ruling Request"), requesting an extension of time under §301.9100-3 of the Procedure and Administration Regulations for Taxpayer to file an election under §1.905-5(e)(1) with respect to certain foreign tax redeterminations (as defined in §1.905-3(a)) that occurred in Taxpayer's taxable year ended Date 2.

FACTS

Taxpayer is a corporation formed under the laws of State. Taxpayer is an accrual method taxpayer with a taxable year ending on Day.

As of Date 3, Taxpayer owned 100 percent of the stock of Sub 1, a Country 1 entity treated as a corporation for U.S. federal tax purposes, and 100 percent of the stock of Sub 2, a Country 2 entity treated as a corporation for U.S. federal tax purposes. At all relevant times, Sub 1 and Sub 2 also had taxable years ending on Day.

Effective Date 9, Sub 1 changed its place of organization to Country 3 and changed its name to Name 1. Effective Date 10, Sub 2 changed its place of organization to Country 3 and changed its name to Name 2. Consistent with the Ruling Request, this letter will continue to refer to Name 1 and Name 2 as Sub 1 and Sub 2, respectively.

As relevant for purposes of this letter, Sub 1 had, for U.S. federal income tax purposes, three foreign tax redeterminations (as defined in §1.905-3(a)) that occurred in its taxable year ended Date 2: (i) an additional assessment of Currency 1 Amount 1 of Country 4 tax, relating to its taxable years ended Date 4 through Date 5; (ii) a refund of Currency 1 Amount 2 of Country 5 tax, relating to either its taxable year ended Date 6 or its taxable

year ended Date 7;¹ and (iii) an additional assessment of Currency 1 Amount 3 of Country 5 tax, relating to certain of its taxable years ended Date 8 through Date 3.²

As relevant for purposes of this letter, Sub 2 had, for U.S. federal income tax purposes, two foreign tax redeterminations (as defined in §1.905-3(a)) that occurred in its taxable year ended Date 2: (i) an additional assessment of Currency 2 Amount 4 of Country 6 tax, relating to its taxable year ended Date 7, and (ii) an additional assessment of Currency 1 Amount 5 of Country 4 tax, relating to its taxable years ended Date 4 through Date 5.

For purposes of this letter, Taxpayer, Sub 1, and Sub 2's taxable year ended Date 2 will be referred to as "FYXX," and the five foreign tax redeterminations mentioned above will be referred to as the "FYXX FTRs."

At all relevant times for purposes of this letter, Taxpayer employed Accounting Firm as an advisor regarding its U.S. federal income tax obligations. In calendar year Year 4, Accounting Firm assisted Taxpayer in determining the potential impact of making an election under §1.905-5(e)(1) with respect to the FYXX FTRs. During this time, Accounting Firm explained to Taxpayer that, if it decided to make an election under §1.905-5(e)(1) with respect to the FYXX FTRs, then Taxpayer was required (pursuant to §1.905-5(e)(2)(i)(C)) to file an amended U.S. federal income tax return for its taxable year ended Date 3, reflecting the FYXX FTRs.

During this time, Accounting Firm did not explain to Taxpayer that, if it decided to make an election under §1.905-5(e)(1) with respect to the FYXX FTRs, then Taxpayer was also required (pursuant to §1.905-5(e)(2)(i)(A)) to file a statement with its original U.S. federal income tax return for FYXX. For purposes of this letter, the statement required by §1.905-5(e)(2)(i)(A) to be included with Taxpayer's original U.S. federal income tax return for FYXX, relating to an election under §1.905-5(e)(1) with respect to the FYXX FTRs, will be referred to as the "Taxpayer FYXX Statement."

Taxpayer ultimately decided to make an election under §1.905-5(e)(1) with respect to the FYXX FTRs. Taxpayer filed an amended U.S. federal income tax return for its taxable year ended Date 3, reflecting the FYXX FTRs, on Date 12.

During calendar years Year 4 and Year 5, Accounting Firm was also engaged to assist Taxpayer with the preparation of its U.S. federal income tax return for FYXX. During this engagement, Accounting Firm did not explain to Taxpayer that Taxpayer was required to file the Taxpayer FYXX Statement. In addition, Taxpayer was not aware of this

¹ The Ruling Request appears to state that the transaction to which the refund relates occurred in calendar year Year 1, but it does not specify whether this transaction occurred in Sub 1's taxable year ended Date 6 or in its taxable year ended Date 7 (which began on Date 11).

² The Ruling Request appears to state that the additional taxes relate to payments made in calendar years Year 2 through Year 3, but it does not specify the taxable years (ended Day) overlapping such calendar years in which such payments were made.

requirement in the course of preparing its U.S. federal income tax return for FYXX. Consequently, Taxpayer's original U.S. federal income tax return for FYXX, which was also filed on Date 12, did not include the Taxpayer FYXX Statement.

In Month Year 5, Accounting Firm inquired as to whether Taxpayer had filed the Taxpayer FYXX Statement. This was the first time that Taxpayer was made aware of the requirement to file the Taxpayer FYXX Statement. Taxpayer subsequently submitted the Ruling Request, requesting an extension of time under §301.9100-3 to file the Taxpayer FYXX Statement.

LAW AND ANALYSIS

Sections 901(a) and (b)(1) provide, in relevant part, that a domestic corporation may elect to claim foreign tax credits for the amount of any income taxes paid or accrued to any foreign country during the taxable year.

Section 902(a), as in effect prior to the passage of the Tax Cuts and Jobs Act of 2017, P.L. 115-97 (the "TCJA"), generally provided that if a domestic corporation owned 10 percent or more of the voting stock of a foreign corporation and received a dividend from such foreign corporation, then for purposes of the foreign tax credit the domestic corporation was deemed to have paid foreign income taxes in an amount equal to the foreign corporation's post-1986 foreign income taxes multiplied by a fraction, the numerator of which was the amount of the dividend and the denominator of which was the foreign corporation's post-1986 undistributed earnings.

Section 902(c)(1), as in effect prior to the passage of the TCJA, provided that a foreign corporation's post-1986 undistributed earnings consisted of the earnings and profits of the foreign corporation accumulated in taxable years beginning after December 31, 1986, as of the close of the taxable year of the foreign corporation in which the dividend (referred to in section 902(a)) is distributed, and without diminution by reason of dividends distributed during such taxable year.

Section 902(c)(2), as in effect prior to the passage of the TCJA, provided that a foreign corporation's post-1986 foreign income taxes consisted of the sum of the foreign income taxes with respect to the taxable year of the foreign corporation in which the dividend (referred to in section 902(a)) is distributed, and the foreign income taxes with respect to prior taxable years of the foreign corporation beginning after December 31, 1986, to the extent that such foreign income taxes are not attributable (pursuant to section 902(a)) to dividends distributed by the foreign corporation in prior taxable years.

Section 902 was repealed by the TCJA, effective for taxable years of foreign corporations beginning after December 31, 2017.

Section 905(c)(1) provides that if accrued foreign income taxes when paid differ from the amounts claimed as foreign tax credits by the taxpayer, accrued foreign income

taxes are not paid before the date two years after the close of the taxable year to which such taxes relate, or any foreign income tax paid is refunded in whole or in part, then the taxpayer shall notify the Secretary, who shall determine the amount of the tax for the year or years affected.

Section 1.905-3(a) generally defines a “foreign tax redetermination” as a change in liability for foreign income taxes that may affect a taxpayer’s U.S. tax liability.

Section 1.905-5(a)(1) generally provides that, except as provided in §1.905-5(e), a foreign tax redetermination of a foreign corporation that relates to a taxable year of the foreign corporation beginning before January 1, 2018, must be accounted for by adjusting the foreign corporation’s earnings and profits, post-1986 undistributed earnings, and post-1986 foreign income taxes for the taxable year of the foreign corporation to which the foreign taxes relate.

Section 1.905-5(a)(2) generally provides that, except as provided in §1.905-5(e), if a foreign tax redetermination occurs (and is accounted for pursuant to §1.905-5(a)(1)), then a redetermination of U.S. tax liability is required to account for the effect of the foreign tax redetermination on the tax liability of a United States shareholder of the foreign corporation in the year to which the redetermined foreign taxes relate and in any subsequent taxable year up to and including the year in which the foreign tax redetermination occurs.

Section 1.905-5(e)(1) generally provides that, if a foreign tax redetermination of a foreign corporation occurs in a taxable year of the foreign corporation that ends with or within a taxable year of a United States shareholder of the foreign corporation ending on or after November 2, 2020, and if such foreign tax redetermination relates to a taxable year of the foreign corporation beginning before January 1, 2018, then an election can be made to treat such foreign tax redetermination as if it had occurred in the foreign corporation’s last taxable year beginning before January 1, 2018 (the “last pooling year”). If an election under §1.905-5(e)(1) is made, then the foreign tax redetermination is accounted for by adjusting the foreign corporation’s post-1986 undistributed earnings and post-1986 foreign income taxes in the last pooling year, rather than in the year to which the redetermined foreign tax relates.

Section 1.905-5(e)(2)(i) generally provides that the election under §1.905-5(e)(1) is made by the controlling domestic shareholders (as defined in §1.964-1(c)(5)) of the foreign corporation. Section 1.905-5(e)(2)(i) also provides certain rules for making an election under §1.905-5(e)(1).

Section 1.905-5(e)(2)(i)(A) generally provides that each controlling domestic shareholder must file the statement required under §1.964-1(c)(3)(ii) with its timely filed original income tax return for such shareholder’s taxable year in which or with which ends the taxable year of the foreign corporation in which a foreign tax redetermination occurs.

Section 1.964-1(c)(3)(ii) generally provides that a statement required pursuant to such section must set forth certain identifying information of the foreign corporation and each controlling domestic shareholder and a description of the action taken on behalf of the foreign corporation.

Section 1.905-5(e)(2)(i)(C) generally provides that each controlling domestic shareholder must file an amended return for its taxable year with or within which ends the foreign corporation's last pooling year, and if applicable must file an amended return for each other affected taxable year, reflecting a redetermination of the controlling domestic shareholder's U.S. tax liability for such year(s) on account of the foreign tax redetermination.

Section 1.905-5(e)(2)(iii) provides that an election under §1.905-5(e)(1) is valid only if all the requirements in §1.905-5(e)(2)(i) are satisfied by each of the controlling domestic shareholders.

Section 301.9100-1(c) provides, in relevant part, that the Commissioner may grant a reasonable extension of time to make a regulatory election under all subtitles of the Internal Revenue Code except subtitles E, G, H, and I.

Section 301.9100-1(b) defines the term "regulatory election" as an election whose due date is prescribed by a regulation published in the Federal Register or a revenue ruling, revenue procedure, notice, or announcement published in the Internal Revenue Bulletin.

Section 301.9100-2 provides automatic extensions of time for making certain elections.

Section 301.9100-3 provides rules for requesting extensions of time for regulatory elections that do not meet the requirements of §301.9100-2. It provides that these requests for relief are granted when the taxpayer provides evidence (including affidavits) to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and the grant of relief will not prejudice the interests of the Government.

Section 301.9100-3(b)(1)(v) provides that, except as provided in §301.9100-3(b)(3), a taxpayer is deemed to have acted reasonably and in good faith if the taxpayer reasonably relied on a qualified tax professional and the tax professional failed to make, or advise the taxpayer to make, the election.

Section 301.9100-3(b)(2) provides that a taxpayer will not be considered to have reasonably relied on a qualified tax professional if the taxpayer knew or should have known that the professional was not competent to render advice on the regulatory election or was not aware of all relevant facts.

Section 301.9100-3(b)(3) provides that a taxpayer is deemed to have not acted reasonably and in good faith if the taxpayer (i) seeks to alter a return position for which an accuracy-related penalty has been or could be imposed under section 6662 at the time the taxpayer requests relief, and the new position requires or permits the regulatory election for which relief is requested; (ii) was informed in all material respects of the required election and related tax consequences, but chose not to file the election; or (iii) uses hindsight in requesting relief.

Section 301.9100-3(c)(1) provides that the interests of the Government are prejudiced if the granting of relief would result in the taxpayer (and other affected taxpayers, if applicable) having lower tax liability in the aggregate for all taxable years affected by the election than the taxpayer(s) would have had if the election had been timely made.

Section 301.9100-3(c)(2) provides that the interests of the Government are ordinarily prejudiced if the taxable year in which the regulatory election should have been made, or any taxable years that would have been affected by the election had it been timely made, are closed by the period of limitations on assessment under section 6501(a) before the taxpayer's receipt of a ruling granting relief under §301.9100-3.

Section 301.9100-1(a) provides that the granting of an extension of time for making an election is not a determination that a taxpayer is otherwise eligible to make the election or that a taxpayer has complied with the other requirements for a valid election.

CONCLUSION

Based on the facts provided, we conclude that the requirements of sections 301.9100-1 and 301.9100-3 have been satisfied. Taxpayer is hereby granted an extension of time of one hundred twenty (120) days from the date of this letter to file the statement required by §1.905-5(e)(2)(i)(A) to be included with Taxpayer's original U.S. federal income tax return for FYXX, relating to an election under §1.905-5(e)(1) with respect to the FYXX FTRs (i.e., a Taxpayer FYXX Statement). Taxpayer should file the statement by attaching it to a duly filed amended return for FYXX.

The ruling contained in this letter is based upon information submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for ruling, it is subject to verification on examination.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

/s/ Le Chen

Le Chen
Attorney, Branch 3
Associate Chief Counsel (International)